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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,815	08/11/2005	Doris Hjorth Hansen	133630-0001	1376
97462 7590 12/21/2010 Mark A. Litman & Associates, P.A. York Business Center, Ste. 205 3209 West 76th Street Edina, MN 55435				
EXAMINER JACKSON, BRANDON LEE				
ART UNIT		PAPER NUMBER		
3772				
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12/21/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/536,815

**Applicant(s)**

HANSEN, DORIS HJORTH

**Examiner**

BRANDON JACKSON

**Art Unit**

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10, 13 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 13, 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is in response to amendments/arguments filed 10/6/2010. Currently, claims 10, 13 and 16 are pending in the instant application.

#### ***Response to Arguments***

Applicant's arguments filed 10/6/2010 have been fully considered but they are not persuasive. Applicant argues the *Te Kanawa* device cannot return to its base tension when the handles are released. However, Applicant has provided no reasoning of why it would not return to its previous tension after the handles are released. When a user pulls the handles, it would increase the tension in the bands (23), and when the handles are released the resiliency of the elastic bands (23) would cause the bands to return to their previous tension (i.e. base tension).

Applicant argues *Te Kanawa* teaches on a single handle, therefore there cannot be a pair of handles located within pockets. However, *Te Kanawa* shows in Fig. 4 a configuration where there is a handle disposed on each side of the user's chest in a recess (45). Therefore, *Te Kanawa* teaches a pair of handles disposed in two pockets.

Applicant argues *Johnstone* fails to teach a chest encircling band of constant width and uniformity. However, *Johnstone* discloses a chest encircling band (68) and Fig. 4 shows the band is of a constant width and there is not indication in the reference, or provided by Applicant, that the band (68) is not uniform throughout.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnstone (US Patent 5,538,502) in view of Te Kanawa (US Patent 6,240,564). Johnstone discloses a post-operative chest support (10) comprising a constant width flexible band (68) of stretchable material encircling the chest (col. 2, lines 1-5), and a first securing system (46) that fixes the support (10) about a patient's chest (fig. 1) at a base tension. The base tension is when the support (10) has been secured to the user's chest. Johnstone fails to disclose a tensioning means. However, Te Kanawa discloses a chest support garment (21) comprising a chest encircling band (23) of material of constant width (fig. 2), a tensioning means (22, 26) located on the front surface of the band (23) and actuable by the patient to vary the tension of the band between the base tension in another tension. The tensioning means includes a pair of handles (22) located in pockets (26) on the front of the garment (21). The pair of

handles (22) allow the user to pull them and vary the tension of the band while donning the garment (21). The band (23) returns to its base tension when the handles (22) are released after the garment (21) is placed upon the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Johnstone device with the tensioning means, as taught by Te Kanawa, in order to assist the user or practitioner in gripping the device when wrapping it about the chest.

With respect to claim 13, the handles (22) may be removed from the band (68) by unstitching the handles (22) from the interior of the pocket (26).

With respect to claim 16, Te Kanawa teaches the pair of handles (22) may be hidden from view when the pockets (26) are closed by hook and loop material (col. 4, lines 43-44).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/  
Examiner, Art Unit 3772

/BLJ/

/Patricia Bianco/

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Supervisory Patent Examiner, Art Unit 3772